

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CHARLTON REED TIPTON,

Plaintiff,

VS.

PHONSO RAYFORD, CHRISTOPHER
PAULEY, CAPTAIN, TEXAS
DEPARTMENT OF CRIMINAL JUSTICE;
JUSTICE; RUTH E. TRICE, CAPTAIN OF
CORRECTIONAL OFFICERS; LORRAINE
SALAS, GRIEVANCE INVESTIGATOR II;
ALFRED HASSLER; ALBERT PERALEZ;
MANUEL PUENTE; MANUEL OROZCO;
and OSBALDO PUENTE,

Defendants.

CIVIL ACTION NO. SA-21-CV-00493-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above-captioned cause on January 16, 2024 (docket #110), concerning the following motions: (1) Defendants Rayford, Pauley, Trice, Orozco, Peralez, Hassler, and Sala's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (c) (docket #100); (2) Defendants Manuel and Osbaldo Puente's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (docket #101); and (3) Defendants' Motion for Summary Judgment (docket #105). On January 19, 2024, Counsel for Plaintiff's Advisory to the Court and Request for Extension of Time (docket #112), was filed advising the Court that Plaintiff's counsel has "thoroughly reviewed the Report and Recommendation, and finds no basis upon which to object to the Magistrate Judge's recommendation. However, to protect the interests of his client," counsel asked that the Plaintiff be "allowed an opportunity to review the Report and Recommendation for himself, and be granted an extension of time to file and serve any objections which he may wish to make." Plaintiff's Advisory, docket #105 at page 1. Counsel

advised further that because the Report and Recommendation was served on counsel on January 16, 2024, Plaintiff's time to file and serve objections will expire on January 30, 2024. Counsel stated that he mailed a copy of the Report and Recommendation to the Plaintiff on January 18, 2024, but an extension of time to file objections was requested to allow time for the mail to be delivered to the Plaintiff and to provide Plaintiff "some time to review the Report and Recommendation and determine whether he intends to file any objections to it." *Id.* at page 2. Counsel's request for an extension of time until February 20, 2024, was granted. To date, the docket reflects no objections to the Report and Recommendation have been received.

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Report and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. § 636(b)(1) such that: (1) Defendants Rayford, Pauley, Trice, Orozco, Peralez, Hassler, and Sala's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (c) (docket #100), and Defendants Manuel and Osbaldo Puente's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (docket #101) shall be DISMISSED AS SUPERSEDED by Defendants' motion for summary judgment, and (2) Defendants' Motion for Summary Judgment (docket #105) shall be GRANTED and Plaintiff Tipton's claims shall be DISMISSED.

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge filed in this cause on January 16, 2024 (docket #110), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that: (1) Defendants Rayford, Pauley, Trice, Orozco, Peralez, Hassler, and

Sala's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (c) (docket #100), and Defendants Manuel and Osbaldo Puente's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (docket #101) are DISMISSED AS SUPERSEDED by Defendants' motion for summary judgment, and (2) Defendants' Motion for Summary Judgment (docket #105) is GRANTED and Plaintiff Tipton's claims are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that motions pending, if any, are also DISMISSED, and this case is CLOSED.

It is so ORDERED.

SIGNED this 23rd day of February, 2024.



FRED BIERY
UNITED STATES DISTRICT JUDGE